

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: John Ho Son aka John Son and Byung Hwa Son aka Susan Son, Applicants

-and-

Keun Ik Hwang aka Ken Hwang and 2691765 Ontario Inc. o/a Wright's Variety,
Respondents

BEFORE: MacNeil J.

COUNSEL: *Christopher Statham* – Lawyer for the Applicants

S. David Hwang – Lawyer for the Respondents

HEARD: June 11, 2025 (via Zoom videoconference)

REASONS FOR DECISION

INTRODUCTION

[1] The Applicants, John Ho Son (“Mr. Son”) and Byung Hwa Son (“Ms. Son”), made this motion for an order to enforce a written settlement agreement between them and the Respondents respecting the within application. The proceeding was commenced in 2022, after the Applicants were excluded from the business owned by the Respondent, 2691765 Ontario Inc. (“the Corporation”), that operated as Wright’s Variety. In the alternative, the Applicants seek an interlocutory injunction restraining the Respondents from interfering with their operation of the Corporation’s business, preventing them from dissipating assets of the Corporation, and related relief.

[2] The Respondents deny that there exists a valid settlement agreement to be enforced between the parties. They submit that the motion should be dismissed as the minutes of settlement are invalid and unenforceable, and the essential terms and conditions of same could not be met by the Applicants. Further, there are no grounds for an interlocutory injunction. The record shows that it was the Applicants who have acted in an egregious and abusive manner towards the Respondent, Keun Ik Hwang (“Mr. Hwang”).

BACKGROUND

Applicants' Allegations

[3] The Applicants have known Mr. Hwang since 1991 and they were purportedly good friends up until the time of the events that gave rise to this court proceeding.

[4] The Corporation was created to purchase and operate a convenience store and gas station business known as Wright's Variety, located in Paris, Ontario ("the Gas Station Property").

[5] Wright's Variety was previously owned by H. Joo ("Mr. Joo"), a friend of Mr. Son.

[6] In 2018, Mr. Son became aware that Mr. Joo was interested in selling Wright's Variety. Mr. Son wanted to purchase Wright's Variety/the Gas Station Property, arrange for the replacement of the underground gas storage tank, and then sell the business at a profit. However, due to their bankruptcies, the Applicants were not in a financial position to purchase the property as they were unable to obtain sufficient financing. As a result, in or around November 2018, Mr. Son asked Mr. Hwang if he was interested in partnering with the Applicants to purchase the property. Ultimately, the parties entered into a verbal agreement in or around November 2018 to jointly purchase the Gas Station Property, including the Wright's Variety business ("the Verbal Agreement").

[7] The Applicants allege that the terms of the Verbal Agreement included, among other things:

- a. Mr. Son, Ms. Son, and Mr. Hwang would arrange for the Corporation to be incorporated for the purpose of purchasing and operating the Wright's Variety business and taking title to the Gas Station Property.
- b. The purchase would be partially financed via a vendor take back mortgage ("the VTB") held by the former owner, Mr. Joo.
- c. Mr. Hwang would initially be listed as the sole shareholder, director and officer of the Corporation. However, they agreed that Mr. Son and Ms. Son would be beneficial owners and shareholders of the Corporation in proportion to their monetary contributions to the business.
- d. Mr. Son, Ms. Son, and Mr. Hwang would all contribute funds to purchase Wright's Variety. Mr. Hwang would contribute a greater amount upfront. However, the Applicants would continue contributing personal funds to the business after the purchase to help pay for the underground gas tank replacement, among other things.
- e. In 2021, once the Applicants' bankruptcies were removed from their respective credit reports, the parties would enter into a shareholders agreement and the Corporation's documents would be amended to list the Applicants as officers, directors and one or both of them as shareholders of the Corporation, with their proportionate shareholdings being based on the amount of their monetary

contributions to Wright's Variety relative to Mr. Hwang, including the amounts paid by Mr. Son and Ms. Son upfront and subsequently during the operation of Wright's Variety.

- f. Mr. Hwang would not be involved in the day-to-day operations of the business and would be paid a dividend equal to 18% of his monetary contribution to the purchase of Wright's Variety per year, paid in monthly installments, until the business was sold.
- g. Mr. Son would be responsible for the management and operations of Wright's Variety.
- h. Ms. Son would work as a cashier alongside Mr. Son at Wright's Variety for 5-6 hours per day, and otherwise assist with the operations of the business.
- i. In exchange for their work managing and operating Wright's Variety, Mr. Son and Ms. Son would each be employed by the Corporation and receive employment income. In addition, the Applicants would be entitled to retain all profits apart from the 18% dividend being paid to Mr. Hwang.
- j. Upon the sale of the business, the proceeds from the sale would be distributed between Mr. Son, Ms. Son and Mr. Hwang in proportion to their shareholdings/contributions at the time of sale.
- k. The parties would live together in a leased residential single-family home, the lease of which would be in Mr. Hwang's name. The Applicants would pay the \$2,000 monthly rent to the landlord, Ms. Son would provide cooking and housekeeping services for the household, and Mr. Hwang would pay \$1,500 per month to the Applicants to cover his portion of the rent, utilities, groceries, housekeeping and cooking services, and other costs.

[8] The Applicants further allege that Mr. Son prepared a written business plan and partner agreement that reflected many of the terms of the Verbal Agreement and showed it to Mr. Hwang, in person, in or around November 2018. The Applicants contend that the business plan and the partner agreement were updated several times between 2018 and 2019 and were shown to, and verbally approved by, Mr. Hwang in person.

[9] In April 2019, Mr. Son provided instructions to the parties' accountant to create the Corporation.

[10] In accordance with the Verbal Agreement, Wright's Variety and the Gas Station Property were purchased by Mr. Son, Ms. Son and Mr. Hwang, via the Corporation. The transaction closed on May 17, 2019 for a purchase price of \$1.8 million plus closing costs.

[11] The Applicants allege that the purchase price was financed as follows:

- a. A \$1.2 million VTB held by Mr. Joo, registered against the Gas Station Property;
- b. Second and third mortgages from private lenders in the amounts of \$114,192.60 and \$121,699.30, respectively, registered against the Gas Station Property;
- c. A \$495,000 payment from Mr. Hwang; and,
- d. A \$76,000 payment from the Applicants.

[12] Following the purchase of the Gas Station Property and Wright's Variety, Mr. Hwang entered into a lease, as the tenant, for the property where the parties then lived ("the Residential Property").

[13] The Applicants allege that, from May 2019 to January 2022, they operated Wright's Variety in accordance with the Verbal Agreement while Mr. Hwang's role was that of a passive investor.

[14] The Applicants allege that, between 2019 and January 2022, they contributed \$312,500.00 of their personal funds, and unpaid labour to the Corporation leaving their own retained earnings in the Corporation's bank account that were used for the purpose of benefiting the Corporation. This amount is comprised of the \$76,000.00 bank draft purportedly paid to Harmony Law Professional Corporation for the purchase of the Gas Station Property and Wright's Variety, and \$236,500.00 for the installation of an underground gas tank.

[15] In or around December 2021, Mr. Son retained an appraiser to provide the current value of Wright's Variety and the Gas Station Property. The appraiser found that the value was approximately \$2.5 million. Around this time, Mr. Son was in the final stages of arranging alternative financing on behalf of the Corporation to replace the VTB with a loan from a financial institution with better terms and a lower interest rate. By this time, the bankruptcies were no longer on the Applicants' credit reports.

[16] About January 20, 2022, Mr. Son contacted the accountant to draft a shareholders agreement. However, before the accountant could do so, Mr. Hwang took steps to fully remove and exclude the Applicants from the Residential Property and the business, including telling them they were fired, forcing them to hand over their keys, and preventing Mr. Son from being able to access his corporate email account or the Corporation's bank account.

[17] As a result of these events, the Applicants retained legal counsel and commenced the within application.

[18] A few days after the Notice of Application was served on Mr. Hwang, Mr. Joo contacted Mr. Son to advise that Mr. Hwang wished to settle the dispute without litigation and without the involvement of lawyers. On March 3, 2022, the parties subsequently met, along with Mr. Joo, to discuss resolution.

[19] The Applicants allege that the parties discussed when they would return to operate Wright's Variety and move back into the Residential Property and decided that this would happen on March 7, 2022. They also agreed that Mr. Hwang would receive \$6,000 every month as his monthly dividend, and that Mr. Son would be issued a new credit card and be granted signing authority to the Corporation's bank account.

[20] The Applicants contend that Mr. Hwang requested that a dollar value be attributed to their respective shares, as reflected in a draft version of the minutes of settlement that the lawyer for the Applicants had prepared prior to the March 3rd meeting. Further, although the March 3, 2022 minutes of settlement were signed by all parties, Mr. Hwang wanted an opportunity to request further changes and this was recorded at paragraph 13, which was inserted via handwriting below the signature lines.

[21] On March 4, 2022, Mr. Son discussed Mr. Hwang's requested amendments to the minutes of settlement with his lawyer. Once changes were made to the minutes of settlement, Mr. Son alleges that he attended Wright's Variety on March 4, 2022 to offer to Mr. Hwang that the parties settle on the basis of the revised minutes. The Applicants assert that Mr. Hwang accepted the offer at that time and he and Ms. Son both signed the March 4, 2022 minutes of settlement during their meeting; Mr. Son then met up with Ms. Son and she signed the March 4, 2022 minutes of settlement ("the Settlement Agreement").

[22] Two terms of the Settlement Agreement were that the Applicants were to be: (i) listed as directors and officers of the Corporation; and (ii) issued shares in the Corporation in accordance with their equitable contributions.

[23] On March 7, 2022, the Applicants returned to work at Wright's Variety. They also moved back into the Residential Property and the tenancy was changed from Mr. Hwang's name to Mr. Son's name. Mr. Hwang moved out of the Residential Property on or about March 13, 2022.

[24] The Applicants assert that, after Mr. Hwang moved out of the Residential Property, he was no longer involved in the day-to-day operations of Wright's Variety and he was paid \$6,000 per month with twelve post-dated Corporation cheques from April 2022 to March 2023, in accordance with the Settlement Agreement. Between March and August 2022, the Applicants were in control of the operations of Wright's Variety and the business of the Corporation.

[25] On or about March 10, 2022, a new business bank account was opened for the Corporation and Mr. Son was given signing authority and issued a new corporate Visa for the Corporation.

[26] Mr. Son asked his then lawyer to prepare a draft unanimous shareholders agreement, as contemplated in the Settlement Agreement. Mr. Son then provided a copy of the draft shareholders agreement to Mr. Hwang. On July 17, 2022, Mr. Hwang texted Mr. Son to say that he was still reviewing and revising the draft shareholders agreement.

[27] On or about July 26, 2022, the Applicants' new lawyer was contacted by Mr. Hwang's new lawyer, who requested a copy of the Notice of Application and the Settlement Agreement.

Subsequently, Mr. Hwang took the position that he had not signed minutes of settlement and that the Applicants had misappropriated corporate funds.

[28] The Applicants dispute that they have improperly taken funds from Wright's Variety. While the Applicants agree that there have been payments out of Wright's Variety to them and their family members, they assert that those payments were in accordance with the parties' agreement that the Applicants would receive employment income as well as profits over and above the 18% dividend payable to Mr. Hwang.

[29] On August 5, 2022, Mr. Hwang attended Wright's Variety with two police officers and his son, who is also a police officer. One police officer told Mr. Son to hand over the keys to the corporate vehicle. Mr. Hwang then hand-delivered to Mr. Son two letters from his lawyer indicating that he was "terminating" the Applicants' services.

[30] Although the Applicants continued to work at Wright's Variety for a short period of time thereafter, on August 9, 2022, after the Applicants had left work for the night, Mr. Hwang and two other individuals attended Wright's Variety and changed the locks.

[31] The Applicants allege that, as a result of Mr. Hwang's conduct, they have been entirely excluded from the operations and management of their business, Wright's Variety, and the Corporation; they have been cut off from their only source of income; and they have been deprived of their life savings.

[32] The Applicants express further concern that it appears Mr. Hwang may be taking steps to sell Wright's Variety and that he intends to exclude them from any proceeds of a sale.

Respondents' Allegations

[33] The Respondent, Mr. Hwang, submits that he personally contributed all of the funds for the \$464,000.00 down payment for the purchase of Wright's Variety; those funds included a \$100,000.00 deposit to the previous owner, Mr. Joo, for the \$1.2 million VTB and a bank draft of \$364,000.00. He had to personally guarantee the VTB and was liable for monthly payments and any default consequences. Further, Mr. Hwang personally obtained the second and third mortgages, in the amounts of \$114,192.60 and \$121,699.30, to put towards the down payment.

[34] Prior to being served with the Notice of Application, Mr. Hwang had no knowledge of any purported shortfall in the funds to cover the purchase price for Wright's Variety and the Gas Station Property such that the Applicants were required to make a \$76,000.00 contribution.

[35] Mr. Son has admitted that Mr. Hwang made sufficient financial contributions toward the sale transaction. In total, Mr. Hwang contributed \$1,930,891.90, which exceeds the purchase price of \$1.8 million plus closing costs.

[36] Mr. Hwang asserts that he was also not aware of the Applicants' alleged contribution of \$76,000.00 or that Mr. Son delivered a bank draft payable to Harmony Law Professional

Corporation. Mr. Hwang denies providing any authorization or instruction to the lawyer to accept a payment from the Applicants to be put towards the purchase of Wright's Variety.

[37] Mr. Hwang alleges that the amount of \$76,000.00 that the Applicants claim to have contributed towards the purchase price was, in fact, comprised of loans that Mr. Son obtained from his daughter and his sister-in-law. Mr. Son then paid back those loans using funds from the Wright's Variety bank account, unbeknownst to Mr. Hwang at the time.

[38] Mr. Hwang submits that, contrary to the Applicants' claim, he was never provided with a copy of the alleged business plan and partner agreement until after the commencement of this litigation.

[39] Mr. Hwang is the President and sole shareholder of the Corporation. He asserts that the Applicants are not shareholders and were not to be added as shareholders. He contracted directly with Mr. Joo for the purchase of the Gas Station Property and Wright's Variety. Mr. Joo confirms this in a sworn affidavit filed in support of the Respondents' position on this motion.

[40] The Applicants were employees with managerial duties at Wright's Variety. However, the Applicants made little effort in maintaining and operating Wright's Variety. Mr. Hwang submits that he had to take on the daily operational tasks associated with running the variety store and gas station. After a few warnings, on January 29, 2022, Mr. Hwang terminated the Applicants' employment and had them removed from the premises. Mr. Hwang took over full control of the business from that date.

[41] The Applicants commenced the within application against the Respondents on February 24, 2022.

[42] Mr. Son made numerous allegations that Mr. Hwang's son had forcibly removed the Applicants from the premises, and they threatened to file charges against Mr. Hwang's son and commence further legal proceedings.

[43] The Respondents submit that, on March 3, 2022, Mr. Hwang met Mr. Son and Mr. Joo at the Gas Station Property. At this meeting, Mr. Joo drafted an agreement, dated March 1, 2022 ("the Original Agreement"), in which it was agreed that the Applicants would obtain and secure a mortgage/financing in the amount of \$1.2 million, to replace and discharge the VTB. In exchange, Mr. Hwang would give the Applicants a 40% share/stake of the corporation. In his reply affidavit, sworn August 11, 2023, Mr. Son admits that he signed the Original Agreement.

[44] The Respondents contend that, at the March 3rd meeting, Mr. Son misrepresented that the Applicants had contributed approximately \$400,000.00 towards the purchase price and improvement of Wright's Variety.

[45] Mr. Hwang was not legally represented at the time of the March 3rd meeting, nor was he advised that he should seek legal advice. Mr. Son has admitted that the minutes of settlement that he is relying on were drafted by a lawyer.

[46] The Respondents assert that the purported minutes of settlement were contingent upon the following conditions:

- (i) negotiation and execution of a shareholder agreement;
- (ii) that the Applicants secure financing of \$1.2 million to discharge the VTB;
- (iii) that the Applicants provide proof of their alleged financial contributions to the business; and
- (iv) a cessation of the within application.

[47] The Respondents allege that the Applicants have not provided proof of their purported financial contributions. Rather, on cross-examination, Mr. Son admitted that the financial contributions the Applicants claim they made actually originated from the bank accounts of Wright's Variety.

[48] The Respondents take the position that there was no valid settlement agreement because the Applicants were unable to prove their financial contributions or meet other of its terms.

[49] While the Applicants claim to have made payments on behalf of the Corporation from their personal funds, Mr. Hwang alleges that Mr. Son admitted on cross-examination that the \$56,000 he contributed toward replacing the underground gas tank came from the Corporation's account. Mr. Son claims that this amount represents unpaid employment income, although he has failed to provide corroborating evidence to support this assertion. Mr. Son also admitted on cross-examination that other deposits made to Mr. Son's personal account were monies taken directly from Wright's Variety.

[50] A review of Wright's Variety records shows numerous payments made to third parties withdrawn from the Corporation's business account during the Applicants' management that have not been adequately explained.

[51] The Respondents submit that any agreements the Applicants allege were executed were based on fraudulent misrepresentations and fraudulent documentation.

ISSUES

[52] The following issues will be determined:

- (a) Whether judgment should be granted in favour of the Applicants pursuant to the Settlement Agreement?
- (b) If not, should an interlocutory injunction be granted in favour of the Applicants?

POSITION OF THE APPLICANTS

[53] It is the position of the Applicants that the Respondents failed to comply with the terms of an accepted offer and that they are entitled to judgment in accordance with the terms of the

accepted offer. Courts have consistently held that settlement agreements ought to be enforced unless there is a real risk of clear injustice, prejudice, mistake or any other “good reason not to enforce”: *Bennett v. Johansen*, 2021 ONSC 3355, at para. 25.

[54] In support of their alternative argument for an interlocutory injunction, the Applicants submit that courts have found that irreparable harm has been established in cases where a refusal to grant an injunction would effectively lead to a situation where a plaintiff stands to lose most or all of its business as a result of a defendant’s conduct.

POSITION OF THE RESPONDENTS

[55] It is the Respondents’ position that the motion should not be granted. The minutes of settlement, or any version thereof, are invalid and unenforceable and should be rescinded on the grounds of fraudulent misrepresentation, no meeting of the minds, unmet conditions, duress, and undue influences. The Applicants were not properly operating the business, and the inventory was depleted. As a result, the Applicants were removed.

[56] Mr. Hwang submits that the minutes of settlement do not represent a complete or binding agreement between the parties. Both versions of the signed minutes of settlement were based on a mutual understanding that certain conditions had to be fulfilled before the agreement would take effect, and those conditions were not met by the Applicants. In any event, Mr. Hwang was not provided with an opportunity to consult with a lawyer before signing. In addition, Mr. Hwang alleges that he signed the minutes of settlement under undue influence and duress and based on misrepresentations made by Mr. Son. Mr. Hwang also submits that he could not read and understand the minutes of settlement since they were written in English. I note that the text communications between the parties were in originally in Korean and certified translations into English were provided in the briefs filed by the parties.

[57] The Respondents’ position is that the application raises numerous contested facts and triable issues, including disputed financial contributions, the existence and validity of various agreements and minutes of settlement, and the credibility of the Applicants. The proceeding is not appropriate for determination by way of application and should proceed by way of an action.

[58] The Applicant have no grounds to support the granting of an interlocutory injunction. The Applicants were never beneficial owners or shareholders or entitled to any ownership interest in Wright’s Variety. The record shows that it was the Applicants who were misappropriating funds and dissipating assets of the Corporation. Their conduct has been egregious and abusive.

ANALYSIS

(a) Should judgment be granted on the Settlement Agreement reached between the parties?

[59] The Applicants seek judgment in accordance with the terms of the Settlement Agreement. This means that I must be satisfied that the issues in dispute may properly be determined without a trial. For the reasons set out below, I am not so satisfied.

[60] Rule 49.09 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 provides:

49.09 Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

- (a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or
- (b) continue the proceeding as if there had been no accepted offer to settle.

[61] A settlement agreement is a contract and is subject to the law of contract formation. Thus, it is subject to the general law of contract regarding offer and acceptance. For a concluded contract to exist, the court must find that the parties: (i) had a mutual intention to create a legally binding contract; and (ii) reached agreement on all of the essential terms of the settlement: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.* (1991), 79 D.L.R. (4th) 97 (Ont. C.A.), at para. 26; *Olivieri v. Sherman*, 2007 ONCA 491, at paras. 32, 41.

[62] In my view, the Applicants have not proved, on a balance of probabilities, that a valid settlement was reached, that is, that the parties mutually intended to create a legally binding contract and agreed on all of the essential terms of the settlement.

[63] Based on the record before me, I am not satisfied that the Settlement Agreement represents a final, informed, and valid agreement. I accept that it appears the parties did subsequently act in a manner that supports that some kind of an arrangement had been reached between them. For instance, the Applicants returned to working at Wright's Variety and the lease for the Residential Property was transferred into Mr. Son's name. However, I find that there are serious factual disputes between the Applicants and the Respondents which are incapable of resolution on the documentary evidence before the Court, including:

- (a) Was Mr. Hwang subject to duress when signing the Settlement Agreement (e.g., due to the Applicants' threatening to sue his police officer son)?
- (b) Did Mr. Hwang understand the nature and effect of the Settlement Agreement? This is not a situation where both parties had legal advice with respect to the preparation and signing of the minutes of settlement in March 2022. Only Mr. Son had legal advice at the relevant time. Further, it appears the parties primarily communicated with each other in the Korean language. However, the Settlement Agreement and many of the other minutes of settlement are written in English. Mr. Hwang's evidence is that he relied on others to translate English into Korean for him, and that he was not capable of reading and understanding an English language document on his own.
- (c) Were there fraudulent misrepresentations made by Mr. Son to get Mr. Hwang to sign the Settlement Agreement?
- (d) Is the Settlement Agreement unconscionable or substantially unfair toward Mr. Hwang? In *Zaidi v. Syed, Estate of, et al.*, 2023 ONSC 1244, at paras. 59-61, aff'd

2024 ONCA 406, the Ontario Superior Court of Justice found that a settlement agreement was unconscionable where a person was in a vulnerable position, was being taken advantage of, and did not have the benefit of independent legal advice and representation.

[64] I also note the affidavit of Mr. Joo, filed by the Respondents “in opposition to” the Applicants’ motion. That affidavit indicates that, at the March 3, 2022 meeting, it was agreed that if the Applicants were able to obtain and secure financing in the amount of \$1.2 million dollars to discharge the VTB, then Mr. Hwang would provide them with a 40% interest in Wright’s Variety. Mr. Joo attests that a further condition of the agreement reached on March 3, 2022, was that the Applicants were to provide proof of their financial contributions from their own personal funds towards the Gas Station Property. As part of his affidavit, Mr. Joo attaches a document that he states is a copy of the Original Agreement he drafted for the parties and that they signed, the first page of which is written in Korean. Finally, Mr. Joo attests that he did not witness Mr. Hwang initial the amendments made to the Settlement Agreement which was attached as Exhibit Z to Mr. Son’s affidavit, sworn November 16, 2022.

[65] I do not agree with the Applicants’ characterization of this motion as a simple enforcement of a settlement agreement. I find that the Respondents have raised valid concerns about whether the Settlement Agreement accurately reflects what the parties discussed and agreed to on March 3 and 4, 2022. A fair and just adjudication of the case on its merits cannot be achieved on this motion given the clear conflict in the evidence of the affiants. As the Ontario Court of Appeal explained in *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450, at para. 44:

What happened here illustrates one of the problems that can arise with a staged summary judgment process in an action where credibility is important. Evidence by affidavit, prepared by a party’s legal counsel, which may include voluminous exhibits, can obscure the affiant’s authentic voice. This makes the motion judge’s task of assessing credibility and reliability especially difficult in a summary judgment and mini-trial context. Great care must be taken by the motion judge to ensure that decontextualized affidavit and transcript evidence does not become the means by which substantive unfairness enters, in a way that would not likely occur in a full trial where the trial judge sees and hears it all. [Emphasis added.]

[66] A fulsome record of evidence is required to make dispositive findings, and this can only be achieved by way of a trial with *viva voce* evidence and cross-examinations.

[67] Accordingly, I conclude that I should exercise my discretion under rule 49.09 and direct that the proceeding continue as if there has been no accepted offer to settle.

(b) *Should an interlocutory injunction be granted in favour of the Applicants?*

[68] As alternative relief, the Applicants seek an interlocutory injunction restraining the Respondents from interfering with their operation of the Corporation’s business and preventing the Respondents from dissipating assets of the Corporation.

[69] The test to be applied when determining a motion for an interlocutory injunction is as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CarswellQue 120 (S.C.C.):

- (i) Is there a serious issue to be tried?
- (ii) Will the moving party suffer irreparable harm if the injunction is not granted?
- (iii) Does the balance of convenience favour the granting of an injunction?

[70] With respect to the first factor, I am satisfied that there is a serious issue to be tried between the parties in terms of whether the Applicants have some type of an ownership interest in the Corporation and the Gas Station Property.

[71] With respect to the second factor, in *RJR-MacDonald Inc. v. Canada (Attorney General)*, *supra*, the Supreme Court of Canada explained “irreparable harm” as follows, at para. 64:

“Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court’s decision ... where one party will suffer permanent market loss or irrevocable damage to its business reputation ... or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined. ...

[72] I do not find that the Applicants will suffer irreparable harm if the requested injunction is not granted. The evidence indicates that Wright’s Variety has been operated by Mr. Hwang since August 2022 and continues to be a going concern as a business. To the extent the Applicants are ultimately successful in their application, the assets of the Corporation and the Gas Station Property remain available to enforce a judgment.

[73] Finally, with respect to the third factor, I find that the balance of convenience does not favour the granting of an injunction since the harm that would be suffered by the Respondents if the injunction is granted outweighs any harm that might be suffered by the Applicants if the injunction is not granted. Mr. Hwang’s financial investment and personal liability with respect to the Gas Station Property and Wright’s Variety is far greater than that of the Applicants. If he loses control of the management and operation of the business to the Applicants, he is in a vulnerable position. It does not appear that the parties can work together any longer and there is no trust between them. Even if the Applicants are wholly successful in their application, it appears they would obtain a minority share in the Corporation and Mr. Hwang would remain the majority shareholder. There is no evidence that he is not operating the business in a reasonable and commercially viable manner. In my view, the *status quo* ought to be maintained until this matter is finally determined or there is a further court order. Mr. Son has since obtained other employment.

[74] While the Applicants express concern that Mr. Hwang may list the Gas Station Property and Wright's Variety for sale, there is no evidence before the court that he has done so or that this is imminent. It is a hypothetical concern at the present time.

[75] Accordingly, I decline to grant an interlocutory injunction in favour of the Applicants as I find that it would not be just or convenient to do so, and they have not met the *RJR-MacDonald Inc.* test.

DISPOSITION

[76] The Applicants' motion is hereby dismissed. This dismissal is without prejudice to the Applicants being able to raise the same issues at trial or, as it relates to the interlocutory injunction, in the event that evidence respecting a potential sale of the Gas Station Property and Wright's Variety is subsequently acquired.

COSTS

[77] I received costs submissions made on behalf of the Respondents at the hearing itself. However, I would urge the parties to agree on costs.

[78] If the parties are unable to agree on costs, they may file costs submissions as follows and submit them to the Sopinka Judicial Assistants to my attention:

- (a) By October 2, 2025, the Respondents shall serve and file their written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers. If the Respondents will be relying on the bill of costs filed on their behalf at the hearing, they should advise the Applicants and the Court of that by the deadline; and
- (b) The Applicants shall serve and file their responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, by October 16, 2025; and
- (c) The Respondents' reply submissions, if any, are to be served and filed by October 23, 2025 and are not to exceed two pages.
- (d) If no submissions are received by October 23, 2025, the parties will be deemed to have resolved the issue of the costs and costs will not be determined by me.

[79] If the parties are able to settle the question of costs or if a party does not intend to deliver submissions, counsel are requested to advise the court accordingly.

Released: September 12, 2025

MacNEIL J.